

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
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MHJP, Inc. f/k/a BCJR, Inc.)	File Nos. EB- 05-TC-078, EB-07-TC-1270
)	
)	NAL/Acct. No. 200732170071
Apparent Liability for Forfeiture)	FRN: 0016773517
)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 1, 2007

Released: August 1, 2007

By the Commission:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”)¹, we find that MHJP, Inc., f/k/a BCJR, Inc. (“MHJP”)² apparently willfully or repeatedly violated section 227 of the Communications Act of 1934, as amended (“Act”), and the Commission’s related rules and orders, by delivering at least seventeen unsolicited advertisements to the telephone facsimile machines of at least thirteen consumers.³ Based on the facts and circumstances surrounding these apparent violations, we find

¹ See 47 U.S.C. § 503(b)(1). The Commission has the authority under this section of the Act to assess a forfeiture against any person who has “willfully or repeatedly failed to comply with any of the provisions of this Act or of any rule, regulation, or order issued by the Commission under this Act” See also 47 U.S.C. § 503(b)(5) (stating that the Commission has the authority under this section of the Act to assess a forfeiture penalty against any person who does not hold a license, permit, certificate or other authorization issued by the Commission or an applicant for any of those listed instrumentalities so long as such person (A) is first issued a citation of the violation charged; (B) is given a reasonable opportunity for a personal interview with an official of the Commission, at the field office of the Commission nearest to the person’s place of residence; and (C) subsequently engages in conduct of the type described in the citation).

² According to publicly available information, MHJP, Inc. was formerly known as BCJR, Inc. Therefore, all references in this NAL to MHJP encompass MHJP as well as BCJR. MHJP has offices at P.O. Box 161759, Altamonte Springs, FL 32716; 180 N. Westmonte Drive, Altamonte Springs, FL 32714-3342 and 3059 Autumn Court, Winter Park, FL 32792-1738. BCJR had offices at 180 N. Westmonte Drive, Altamonte Springs, FL 32714-3342. Matt Hubbard, President, is listed as the contact person for MHJP. Accordingly, all references in this NAL to MHJP also encompass the foregoing individual and all other principals and officers of this entity, as well as the corporate entity itself. The registered agent for MHJP, who was also the registered agent for BCJR, is Traci Reagan, 513 Balsawood Court, Altamonte Springs, FL 32714.

³ See 47 U.S.C. § 227(b)(1)(C); 47 C.F.R. § 64.1200(a)(3); see also *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order and Third Order on Reconsideration*, 21 FCC Rcd 3787 (2006).

that MHJP is apparently liable for a forfeiture in the amount of \$87,500.

II. BACKGROUND

2. Section 227(b)(1)(C) of the Act makes it “unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States . . . to use any telephone facsimile machine, computer, or other device to send, to a telephone facsimile machine, an unsolicited advertisement.”⁴ The term “unsolicited advertisement” is defined in the Act and the Commission’s rules as “any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person’s prior express invitation or permission in writing or otherwise.”⁵ Under the Commission’s rules, an “established business relationship”⁶ exception permits a party to deliver a message to a consumer if the sender has an established business relationship with the recipient *and* the sender obtained the number of the facsimile machine through the voluntary communication by the recipient, directly to the sender, within the context of the established business relationship, or through a directory, advertisement, or a site on the Internet to which the recipient voluntarily agreed to make available its facsimile number for public distribution.⁷

3. On December 22, 2005, in response to one or more consumer complaints alleging that BCJR, MHJP’s predecessor, had faxed unsolicited advertisements, the Commission staff issued a citation⁸ to BCJR, pursuant to section 503(b)(5) of the Act.⁹ In this citation, the staff cited the company¹⁰ for using a telephone facsimile machine, computer, or other device, to send unsolicited advertisements for travel promotions to a telephone facsimile machine, in violation of section 227 of the Act and the Commission’s related rules and orders. The citation, which the staff served by certified mail, return receipt requested, warned the company that subsequent violations could result in the imposition of monetary forfeitures of up to \$11,000 per violation, and included a copy of the consumer complaints that formed the basis of the

⁴ 47 U.S.C. § 227(b)(1)(C); 47 C.F.R. § 64.1200(a)(3).

⁵ 47 U.S.C. § 227(a)(4); 47 C.F.R. § 64.1200 (f)(13).

⁶ An “established business relationship” is defined as a prior or existing relationship formed by a voluntary two-way communication “with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the business or residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party.” 47 C.F.R. § 64.1200(f)(5).

⁷ See 47 U.S.C. § 227(b)(1)(C); 47 C.F.R. § 64.1200(a)(3)(i), (ii).

⁸ Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-05-TC-078 issued to BCJR, Inc. on December 22, 2005. The Commission staff subsequently issued a citation to the same entity under the name “MHJP.” See Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-07-TC-1270 issued to MHJP, Inc. f/k/a BCJR, Inc. on May 25, 2007. All violations at issue herein pre-date this later citation.

⁹ See 47 U.S.C. § 503(b)(5) (authorizing the Commission to issue citations to persons who do not hold a license, permit, certificate or other authorization issued by the Commission or an applicant for any of those listed instrumentalities for violations of the Act or of the Commission’s rules and orders).

¹⁰ Commission staff issued the December 22, 2005 citation to BCJR, Inc., because MHJP formerly operated under the corporate name BCJR, Inc. See n.2, *supra*. In a letter dated November 13, 2006 responding to a Commission request for information, TouchTone Communications provided previous billing information for MHJP indicating that BCJR was the predecessor to MHJP. Letter from Neil DeRiggi, Customer Service Manager, TouchTone Communications, to Federal Communications Commission, Enforcement Bureau, Telecommunications Consumers Division, dated November 13, 2006. The toll-free number at issue in this NAL, 1-800-215-3132, was listed as a number “associated” with the toll-free number that Commission staff had inquired about at that time. The letter indicated that Matt Hubbard was the contact person for both BCJR and MHJP. As of June 14, 2007, Matt Hubbard was still listed as the contact person for MJHP in TouchTone’s billing records. Letter from Neil DeRiggi, Customer Service Manager, TouchTone Communications, to Federal Communications Commission, dated June 14, 2007.

citation.¹¹ The citation informed the company that within thirty days of the date of the citation, it could either request an interview with Commission staff, or could provide a written statement responding to the citation. The company did not request an interview or otherwise respond to the citation.

4. Despite the citation's warning that subsequent violations could result in the imposition of monetary forfeitures, we have received seventeen additional consumer complaints indicating that MHJP continued to engage in such conduct after receiving the citation.¹² We base our action here specifically on complaints filed by thirteen consumers establishing that MHJP continued to send seventeen unsolicited advertisements to telephone facsimile machines after December 22, 2005, the date of the initial citation.¹³

5. Section 503(b) of the Act authorizes the Commission to assess a forfeiture of up to \$11,000 for each violation of the Act or of any rule, regulation, or order issued by the Commission under the Act by a non-common carrier or other entity not specifically designated in section 503 of the Act.¹⁴ In exercising such authority, we are to take into account "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."¹⁵

III. DISCUSSION

A. Violations of the Commission's Rules Restricting Unsolicited Facsimile Advertisements

6. We find that MHJP apparently violated section 227 of the Act and the Commission's related rules and orders by using a telephone facsimile machine, computer, or other device to send at least seventeen unsolicited advertisements to the thirteen consumers identified in the Appendix. This NAL is based on evidence that these consumers received unsolicited fax advertisements from MHJP *after* the Bureau's December 22, 2005 citation. The facsimile transmissions advertise travel promotions. Further, according to the complaints, the consumers neither had an established business relationship with MHJP, nor gave MHJP permission to send the facsimile transmissions.¹⁶ The faxes at issue here therefore fall

¹¹ Commission staff mailed the December 22, 2005 citation to BCJR, Inc., 180 N. Westmont Drive, Altamonte Springs, FL 32714, and sent the May 25, 2007 citation to MHJP, Inc. f/k/a BCJR, Inc., 3059 Autumn Court, Winter Park, FL 32792-1738; and P.O. Box 161759, Altamonte Springs, FL 32716. *See* n.2, *supra*.

¹² *See* Appendix for a listing of the consumer complaints against MHJP requesting Commission action.

¹³ We note that evidence of additional instances of unlawful conduct by MHJP may form the basis of subsequent enforcement action.

¹⁴ Section 503(b)(2)(C) provides for forfeitures up to \$10,000 for each violation in cases not covered by subparagraph (A) or (B), which address forfeitures for violations by licensees and common carriers, among others. *See* 47 U.S.C. § 503(b). In accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, Pub. L. 104-134, Sec. 31001, 110 Stat. 1321, the Commission implemented an increase of the maximum statutory forfeiture under section 503(b)(2)(C) to \$11,000. *See* 47 C.F.R. § 1.80(b)(3); *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 15 FCC Rcd 18221 (2000); *see also Amendment of Section 1.80(b) of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 19 FCC Rcd 10945 (2004) (this recent amendment of section 1.80(b) to reflect inflation left the forfeiture maximum for this type of violator at \$11,000).

¹⁵ 47 U.S.C. § 503(b)(2)(D); *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, Report and Order*, 12 FCC Rcd 17087, 17100-01 para. 27 (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999).

¹⁶ *See, e.g.*, complaint dated August 28, 2006, from Anne Sheafer, Mageira Diesel Injection Service, Inc., stating that her company neither gave consent, nor did business with any of the companies from whom it received unsolicited faxes, including MHJP. The complainants involved in this action are listed in the Appendix below.

within the definition of an “unsolicited advertisement.”¹⁷ Based on the entire record, including the consumer complaints, we conclude that MHJP apparently violated section 227 of the Act and the Commission’s related rules and orders by sending seventeen unsolicited advertisements to thirteen consumers’ facsimile machines.

B. Proposed Forfeiture

7. We find that MHJP is apparently liable for a forfeiture in the amount of \$87,500. Although the *Commission’s Forfeiture Policy Statement* does not establish a base forfeiture amount for violating the prohibition against using a telephone facsimile machine to send unsolicited advertisements, the Commission has previously considered \$4,500 per unsolicited fax advertisement to be an appropriate base amount.¹⁸ We apply that base amount to each of fifteen of the apparent violations. In addition, where the consumer requests the company to stop sending facsimile messages, and the company continues to send them, the Commission has previously considered \$10,000 per unsolicited fax advertisement the appropriate forfeiture for such egregious violations.¹⁹ Here, two consumers specifically requested that MHJP cease sending facsimiles. Notwithstanding these requests, an additional two facsimiles were sent to these consumers. Thus, we apply the \$10,000 amount to each of two of the apparent violations. Thus, a total forfeiture of \$87,500 is proposed. MHJP will have the opportunity to submit evidence and arguments in response to this NAL to show that no forfeiture should be imposed or that some lesser amount should be assessed.²⁰

IV. CONCLUSION AND ORDERING CLAUSES

8. We have determined that MHJP, Inc. apparently violated section 227 of the Act and the Commission’s related rules and orders by using a telephone facsimile machine, computer, or other device to send at least seventeen unsolicited advertisements to the thirteen consumers identified in the Appendix. We have further determined that MHJP, Inc. is apparently liable for a forfeiture in the amount of \$87,500.

9. Accordingly, IT IS ORDERED, pursuant to section 503(b) of the Act, and section 1.80 of the Rules, 47 C.F.R. § 1.80, 47 U.S.C. § 503(b), that MHJP, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of \$87,500 for willful or repeated violations of section 227(b)(1)(C) of the Communications Act, 47 U.S.C. § 227(b)(1)(C), sections 64.1200(a)(3) of the Commission’s rules, 47 C.F.R. § 64.1200(a)(3), and the related orders described in the paragraphs above.

10. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission’s rules,²¹ within thirty (30) days of the release date of this *Notice of Apparent Liability for Forfeiture*, MHJP, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

¹⁷ See 47 U.S.C. § 227(a)(4); 47 C.F.R. § 64.1200(f)(13) (definition previously at § 64.1200(f)(10)).

¹⁸ See *Get-Aways, Inc.*, Notice of Apparent Liability For Forfeiture, 15 FCC Rcd 1805 (1999); *Get-Aways, Inc.*, Forfeiture Order, 15 FCC Rcd 4843 (2000); see also *US Notary, Inc.*, Notice of Apparent Liability for Forfeiture, 15 Rcd 16999 (2000); *US Notary, Inc.*, Forfeiture Order, 16 FCC Rcd 18398 (2001); *Tri-Star Marketing, Inc.*, Notice of Apparent Liability For Forfeiture, 15 FCC Rcd 11295 (2000); *Tri-Star Marketing, Inc.*, Forfeiture Order, 15 FCC Rcd 23198 (2000).

¹⁹ See *Carolina Liquidators, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC 16,837, 16,842 (2000); *21st Century Fax(es) Ltd., AKA 20th Century Fax(es)*, 15 FCC Rcd 24,406, 24,411 (2000).

²⁰ See 47 U.S.C. § 503(b)(4)(C); 47 C.F.R. § 1.80(f)(3).

²¹ 47 C.F.R. § 1.80.

11. Payment by check or money order, payable to the order of the “Federal Communications Commission,” may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251. Payment by overnight mail may be sent to Mellon Client Service Center, 500 Ross Street, Room 670, Pittsburgh, PA 15262-0001, Attn: FCC Module Supervisor. Payment by wire transfer may be made to: ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6229. The payment should note NAL/Acct. No. 200732170071.

12. The response, if any, must be mailed both to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Telecommunications Consumers Division, and to Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, and must include the NAL/Acct. No. referenced in the caption.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Requests for payment of the full amount of this *Notice of Apparent Liability for Forfeiture* under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, SW, Washington, DC 20554.²²

15. IT IS FURTHER ORDERED that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by Certified Mail Return Receipt Requested to MHJP, Inc., Attention: Matt Hubbard, President, 3059 Autumn Court, Winter Park, FL 32792-1738; 180 N. Westmonte Drive, Altamonte Springs, FL 32714-3342, P.O. Box 161759, Altamonte Springs, FL 32716 and c/o Traci Reagan, 513 Balsawood Court, Altamonte Springs, FL 32714.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²² 47 C.F.R. § 1.1914.

APPENDIX

Complainant sent facsimile solicitations	Violation Date(s)
Anne Sheaffer	8/25/06
Jerome Grdina	8/9/06
Babette Krolik	9/28/06
Norman McCrea	8/21/06
Joseph Zelik	10/4/06
Mark Wehrmann	8/29/06
Steve Haynosch	8/2/06
Van Wood	8/28/06, 9/12/06
Lauren Blough	9/7/06
Nick Weaver	9/28/06, 10/12/06
Nicole McMahan	8/15/06, 8/28/06, 10/4/06

Complainant sent facsimile solicitations after requesting no more be sent	Violation Date(s)
Peter Kutemeyer	8/9/06
Grant Weldin	8/17/06